

# COMPLIANCE AGREEMENT

between the

**SAN DIEGO AIRCRAFT CARRIER MUSEUM**

of San Diego, California

and the

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

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**Toxic Substances Control Act**

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In Re:

Transfer of the ex-USS MIDWAY from the Navy to  
San Diego Aircraft Carrier Museum of San Diego, California

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Table I  
Appendix A

**COMPLIANCE AGREEMENT**  
between the  
**SAN DIEGO AIRCRAFT CARRIER MUSEUM**  
of San Diego, California  
and the  
**UNITED STATES**  
**ENVIRONMENTAL PROTECTION AGENCY**

**I. PARTIES**

The United States Environmental Protection Agency ("EPA") and the San Diego Aircraft Carrier Museum, San Diego, CA, a nonprofit corporation, (hereinafter referred to as the "DONEE") are parties to this Compliance Agreement ("AGREEMENT") regarding the donation by the United States Navy (the "Navy") of the aircraft carrier USS MIDWAY (CV-41) (hereinafter referred to as the "ex-MIDWAY") to the DONEE for continued use as a static Naval Aviation memorial museum provided certain terms and conditions are met to the satisfaction of EPA.

**II. JURISDICTION**

This AGREEMENT is intended to address certain instances of the DONEE's anticipated noncompliance with the requirements of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601 et seq, which relate to polychlorinated biphenyls ("PCBs") and the PCB regulations at 40 C.F.R. Part 761 during the operation of the ex-MIDWAY as a static museum.

**III. PURPOSE**

Subject to EPA's reservation of rights, this AGREEMENT specifies the terms and conditions under which EPA will exercise its enforcement discretion and refrain from bringing an enforcement action against the DONEE for the violations of TSCA PCB requirements and the PCB regulations at 40 C.F.R. Part 761 that are described herein. Based on the facts presented to EPA and referenced in this AGREEMENT, EPA has determined that this exercise of enforcement discretion is protective of human health and the environment and will serve the public interest.

**IV. COVERED MATTERS**

1. This AGREEMENT applies to both authorized and unauthorized PCB uses on the ex-MIDWAY. For authorized PCB uses, this AGREEMENT includes terms and conditions that are in addition to existing regulatory requirements at 40 C.F.R. Part 761.
2. This AGREEMENT mandates sampling, maintenance, notice, training, cleanup procedures, and other requirements for PCBs on the ex-MIDWAY.

3. EPA enforcement discretion regarding the transfer of the ex-MIDWAY from the Navy to the DONEE was addressed in a separate EPA/Navy agreement. That agreement addressed steps the Navy will take with respect to the transfer of the ex-MIDWAY to the DONEE in light of the presence of PCBs on the ex-MIDWAY.

4. This AGREEMENT is not and will not be construed as a release of the DONEE from any legal or regulatory obligations, including obligations under TSCA or any other environmental laws.

## V. DEFINITIONS

Except as noted herein below, the terms in this AGREEMENT will have their ordinary meaning unless defined under TSCA or 40 C.F.R. Part 761. The following definitions apply to this AGREEMENT.

- a. "Days" means calendar days, not working days, unless otherwise specified. However, if a document submittal under this AGREEMENT falls due on a weekend or federal holiday, it will be due and deemed timely if submitted on the next business day following the weekend or holiday on which it fell due.
- b. "Non-liquid PCB materials" means any non-liquid material containing any component of PCBs including all of the following items on the ex-MIDWAY which may contain PCBs and for the purposes of this AGREEMENT are assumed to contain PCBs: caulking; felt and rubber ventilation duct flange gaskets; insulation and other non-metallic components of electrical cable; fluorescent light ballast starters and potting material; bulkhead and pipe insulation; foam rubber/plastic/fiberglass/cork anti-sweat insulation used on hull surfaces and cold water piping; other rubber products such as pipe hanger rubber blocks, snubbers, bumpers, shock and vibration mounts, pads, spools, hatch gaskets, O-rings, packing, grommets, etc.; adhesive tape and double-backed adhesive tape; dried aluminized paint; and dried oil-based paint.
- c. "Polychlorinated biphenyls," "PCB" or "PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of such material with other substances.
- d. "PCB item," for the purpose of this AGREEMENT only, means any item that does in fact or is assumed to contain liquid PCBs and includes transformers, capacitors, and any other piece of equipment or other material having or assumed to contain a liquid PCB component.
- e. "PCB inventory" means the complete and final listing of suspected PCB items that was developed by the Navy upon deactivation, and any additions to that inventory that were made by the Navy, the DONEE, EPA, or any third party.

f. "The public" means anyone who is not involved in routine maintenance of the ex-MIDWAY and may include, but is not limited to: tourists, press personnel, business visitors, VIPs, museum employees, volunteers, vendors, and contractors.

g. "spill" with regard to this AGREEMENT specifically means residual PCBs left on any ship's surface resulting from any use, management, processing, storage, transportation, or disposal of PCBs or PCB items.

h. "wire cables" refer to the entire electrical wire cable assembly, including the metal jacket surrounding the rubber or plastic insulation, the insulation material, and the metallic wire conductor itself, as well as any connectors and circuit breakers.

## VI. BACKGROUND AND STATEMENT OF FACTS

1. In 1989, the Navy states that they discovered that the wool felt used as acoustical damping material on submarines and as gasket material on all vessels may contain viscous PCBs at concentrations of 50 to 300,000 parts per million ("ppm") by weight. The felt material was procured from 1948 to the late 1970s under specifications that required a fire retardant and was used during both new construction and repair of vessels.

Subsequent investigations by the Navy since 1990 have determined that solid PCBs are also present in some commercial industrial and shipboard items, such as caulking, o-rings, packing, grommets, aluminized and gloss oil-based paint, fluorescent light ballast starters and potting material, hatch and ventilation duct flange gaskets, rubber shock and vibration mounts, rubber and electrical cable insulation, tape, etc. used on vessels.

2. The ex-MIDWAY contains some or all of these materials. The results of the Navy's 1997-98 PCB sampling survey on the ex-MIDWAY shows some of these materials contain PCBs from less than 1 mg/kg (ppm) to as high as 560,000 ppm. This survey, however, is not a complete characterization of the extent of PCBs in these materials on the ex-MIDWAY, and other materials of these types and surface contamination that may exist on the ex-MIDWAY with PCB concentrations that exceed these ranges.

3. Many of these items that may contain PCBs are in locations accessible only by dismantling the vessel's structure, or moving equipment or machinery, which gives rise to safety and environmental risks. Such items are often integral to the continuing function of the vessel as a vessel or to maintain the watertight and structural integrity of the vessel. The reuse of industrial equipment is similarly dependent on not removing those materials that contain or may contain non-liquid PCBs.

4. PCB use, distribution in commerce, and disposal are regulated by EPA under TSCA and 40 C.F.R. Part 761. Non-liquid PCB materials and PCB items at 50 ppm or greater may only be used in a totally enclosed manner (40 C.F.R. § 761.20 (a)) within the United States unless

otherwise authorized by EPA under TSCA. Certain, if not all, of the uses described in the paragraphs above are not totally enclosed, and therefore not authorized by EPA.

5. The Navy advises EPA that when the ex-MIDWAY was placed on inactive status on March 1, 1992, the Navy conducted the following activities: a) a ship-wide PCB inventory, b) removal of leaking electrical equipment from the vessel, c) clean up of spills in accordance with the provisions of 40 C.F.R. Part 761, d) inventorying and labeling of non-leaking PCB items left intact, and e) testing of hydraulic and heat transfer systems and, if their fluids tested above 50 ppm PCB, draining and possibly retrofilling.

6. When felt is removed from ventilation duct work or other sites, the adjacent area formerly in contact with the felt typically contains residual PCBs from the felt. Because this contamination has probably existed since the felt was installed, the release or spill is deemed to have occurred prior to May 4, 1987. Therefore, the PCB Spill Cleanup Policy, 40 C.F.R. Part 761, Subpart G, does not apply. Thus, any decontamination may proceed in accordance with 40 C.F.R. § 761.79 or an alternative method under 40 C.F.R. § 761.79(h) as authorized by Region IX as defined in this AGREEMENT.

7. The Navy asserts that due to the location, configuration, and manner in which felt is used, the exposed surfaces of felt gaskets are extremely limited. Therefore, other than incidental dermal contact, the exposure to PCBs would be considered minimal. Moreover, the public should not have contact with the felt following encapsulation procedures. The Navy further contends that PCBs in the jackets of wire cables are inextricably bound in the material of the jacket. The material is a corrosion resistant plastic or rubber designed for use in a salt air/salt water environment. However, EPA has determined that the PCBs in the wire cables is not a totally enclosed use and is currently not authorized for use under TSCA.

8. Under 10 U.S.C. Section 7306, the Navy is authorized to donate ships to state governments and non-profit organizations for use as museums and memorials. Pursuant to this statutory authority, the Navy intends to donate the ex-MIDWAY to the DONEE for use as an aircraft carrier memorial and museum.

9. The donation contract, Contract No. N00024-03-C-0201 ("Donation Contract"), which is the sole legal document evidencing title transfer from the Navy to the DONEE, requires the DONEE to maintain the ex-MIDWAY in a condition satisfactory to the Navy including the management of the ex-MIDWAY in accordance with the requirements established by this AGREEMENT between the DONEE and EPA.

## **VII. REQUIREMENTS AND DELIVERABLES**

### **A. General**

1. The following requirements and deliverables shall be documented for or submitted to EPA Region IX Toxics Section (hereinafter "Region IX") within the time frames prescribed. Region IX shall determine the adequacy and completeness of all submissions required under this AGREEMENT.

2. When an action or series of actions is required, the DONEE shall provide Region IX with written confirmation that the requirement has been met. The requirements and deadlines for these actions are summarized in Table I.

3. Region IX may waive a portion of the lead time requirements at its sole discretion. Region IX may alter specific technical requirements in this AGREEMENT in writing based on a written request from the DONEE at the sole discretion of Region IX.

4. This AGREEMENT, including all technical discussions, applies only to PCBs and does not address DONEE's responsibilities with respect to any other regulated materials.

### **B. Disposal of PCB Items**

1. Within 30 days following the ex-MIDWAY's arrival in San Diego, California (or within a time frame mutually agreed to in writing by Region IX and DONEE), the DONEE shall remove all PCB items found on the ex-MIDWAY or that are listed on the PCB inventory in accordance with PCB regulations. Dry transformers are not defined as PCB items and need not be removed.

2. If the DONEE is unable to remove any PCB items found on the ex-MIDWAY or listed on the PCB inventory due to their locations on the vessel or if the structural integrity of the vessel would be jeopardized by their removal, the DONEE shall consult with EPA, who in consultation with the Navy shall determine whether the PCB item shall be removed.

3. Within 30 days after removal of these items, the DONEE shall provide written notification to Region IX certifying that PCB items found on the ex-MIDWAY and those listed on the PCB inventory have been removed and disposed of in accordance with the PCB disposal regulations at 40 C.F.R. Part 761.

### **C. Preparation of Tour Routes**

#### **1. Access to the ex-MIDWAY**

a) The DONEE is required to ensure that the public is restricted to areas sampled and shown to be 10 micrograms per 100 square centimeter ("10 ug/100 cm<sup>2</sup>") PCB or less on surfaces, and less than one microgram per cubic meter ("1ug/m<sup>3</sup>") PCB in air.

b) Personnel involved in activities required to prepare the ex-MIDWAY to be towed or involved in completing the requirements under this AGREEMENT to open the ex-MIDWAY to the public are not subject to this restriction.

c) Within 30 days following the ex-MIDWAY's arrival in San Diego, California (or within a time frame mutually agreed to in writing by EPA Region IX and DONEE), the DONEE shall submit copies of the ex-MIDWAY's blueprints or maps with the proposed tour routes highlighted. Upon approval by Region IX, the blueprints or map shall be deemed a part of the AGREEMENT by reference and/or attachment.

#### **2. Locations of Remaining PCB Items & Non-Liquid PCB Materials**

a) At least 60 days prior to commencement of tours, (or within a time frame mutually agreed to in writing by Region IX and DONEE) the DONEE shall submit to Region IX a document describing the type and location of any remaining PCB items and non-liquid PCB materials on the ex-MIDWAY located along the proposed tour route(s) and in areas that may be accessed by the public.

b) This document shall be updated and provided to Region IX within 10 business days of discovery of any additional PCB items or non-liquid PCB materials not included in the initial listing.

#### **3. PCB Sampling**

a) No later than 30 days following the ex-MIDWAY's arrival in San Diego, California (or within a time frame mutually agreed to in writing by Region IX and DONEE), the DONEE shall develop for Region IX a sampling scheme for the complete sampling and analysis of interior ship surfaces and indoor air for PCBs in areas where the public and museum staff is expected to have access, in order to establish a baseline/ background and/or to determine if PCB levels are acceptable before the public enters the area.

b) The number of surface and air samples required shall correlate to the size of the proposed tour area.

c) Any oil, especially oil from equipment that may have leaked, and grease stains and grease in any hoist apparatus or dumbwaiter tract, discovered on any surface in areas to be opened to the public, shall be sampled for PCB contamination.

d) Sampling, analysis, and associated activities related to known or suspected PCBs on surfaces shall be conducted by the DONEE or under the DONEE's direction to ensure conformance with the following EPA directives and others as specified by Region IX:

i) 40 C.F.R. Part 761, Subpart P: "Sampling Non-Porous Surfaces for Measurement Based Use, Reuse, and On-Site or Off-Site Disposal Under § 761.61(a)(6) and Decontamination Under § 761.79(b)(3) and § 761.79(h),

ii) 40 C.F.R. Part 761, Subpart G: "PCB Spill Cleanup Policy,"

iii) Methods 3500/3540B and Method 8082 in SW-846: "Test Methods for Evaluating Solid Waste", for extracting and analyzing sampling media,

iv) "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans (QAMS-005/80)," for conducting, sample preservation, chain-of-custody record-keeping, and quality assurance/quality control ("QA/QC") records, and

v) NIOSH Method 5503 for conducting air sampling for PCBs (Polychlorobiphenyls).

e) When using NIOSH Method 5503, the DONEE shall sample indoor air for no less than eight hours and collect sufficient air sample so as to provide for a chemical extraction and analysis of the sample to have a limit of quantitation of less than  $1\text{ug}/\text{m}^3$ .

f) Regardless of whether the DONEE intends to operate air handling systems in areas open to the public, the DONEE is required to take baseline air sampling. If the DONEE intends to use the air handling systems, they must be on and operational during the baseline air sampling.

g) No later than 30 days following EPA approval of the plan (or within a time frame mutually agreed to in writing by Region IX and the DONEE) and prior to performing any encapsulation of non-liquid PCB materials, the DONEE shall execute the Region IX approved sampling plan

h) The DONEE shall provide Region IX with the sampling results no later than 21 days after the samples are taken and at least 60 days prior to the commencement of tours (or within a time frame mutually agreed to in writing by Region IX and DONEE).

i) If test results confirm PCB concentrations exceeding  $10\text{ug}/100\text{cm}^2$  on surfaces and  $1\text{ug}/\text{m}^3$  in air, the DONEE shall inform Region IX and follow the decontamination procedures at 40 C.F.R. § 761.79 for non-porous surfaces and Paragraph VII.D.9 for air handling systems until

the applicable decontamination standards have been met. Painted or coated surfaces must either be encapsulated per the procedures at VII.C.5 or the surfaces decontaminated in accordance with the alternative decontamination procedures at § 761.79(h)

j) The DONEE agrees to conduct any additional sampling that EPA may determine necessary within time frames established by EPA in consultation with the DONEE.

k) If after opening for tours, the DONEE discovers that any area open to the public exceeds  $1 \text{ ug/m}^3$  in air, the DONEE must immediately suspend tours in that area and inform EPA in writing within 48 hours of the discovery (See air handling systems under maintenance procedures at Paragraph VILD.9).

l) Where surface samples exceed  $10 \text{ ug/100 cm}^2$ , the DONEE must provide interim protection to avoid dermal contact or suspend tours, and notify Region IX in writing within 48 hours of the implemented and proposed corrections.

m) Tours may be resumed only upon retesting to verify that air and surface sampling is within the concentrations specified in Paragraph VII.C.3.i above or after Region IX agrees that the affected area may be used again.

n) Region IX may prohibit use of the affected areas until additional remedies are implemented.

o) The DONEE shall ensure compliance with the disposal procedures outlined in 40 C.F.R. Part 761, Subpart D, and the storage procedures outlined in 40 C.F.R. § 761.65 for PCB waste.

#### 4. Removal of Ballasts

Within 30 days following the *ex-MIDWAY*'s arrival in San Diego, California, (or within a time frame mutually agreed to in writing by Region IX and DONEE), the DONEE shall remove all PCB ballasts from fluorescent lights along proposed tour routes and in areas that may be accessed by the public or the DONEE shall provide to Region IX any information which would demonstrate that any fluorescent light ballast not removed does not contain detectable concentrations of PCBs.

#### 5. Encapsulation

a) At least 30 days before the *ex-MIDWAY* is opened to the public, the DONEE shall either remove or encapsulate suspected non-liquid PCB materials, especially any caulking material, located on proposed tour routes or in areas accessible to the public by the application of two coats of paint in different colors.

i) The first coat of encapsulant shall be a yellow color that is similar in shade to the PCB warning labels unless there is already a yellow color adjoining the encapsulation, in which case the first coat of encapsulant shall be red. The second coat shall be any color contrasting with yellow, or contrasting with red, if that color is applied as the first coat.

ii) Upon completion of encapsulation requirements, the DONEE shall notify Region IX in writing.

b) When any portion of the secondary coat wears away or becomes dissociated (e.g., chips or peels off) from the primary coat, a new secondary coat shall be applied to the affected area within three days by the DONEE.

c) In the event that the primary coat becomes dissociated from the non-liquid PCB material, a new primary and secondary coat shall be reapplied within 48 hours of the primary coat's dissociation from the non-liquid PCB material.

#### 6. Worker Protection

a) No later than 30 days following the ex-MIDWAY's arrival in San Diego, (or within a time frame mutually agreed to in writing by Region IX and DONEE), the DONEE shall submit to Region IX a worker health and safety plan.

b) The DONEE shall forewarn painters and workers of the likely presence of PCBs and advise them of procedures to minimize exposure (including no heating, scraping or sanding of the substrate unless necessary).

c) If workers are to engage in scraping or sanding of this material, the plan shall require painters and workers to use appropriate protective measures such as protective clothing, eye protection and respirators, per 29 C.F.R. § 1910.120 of OSHA, to limit the exposure of such workers to no greater than the permissible exposure limits specified by NIOSH. *Warning: Avoid heating to remove PCB contaminated paint. Exposure to excessive heat, especially open flame, can result in formation of soot containing PCBs, polychlorinated dibenzofurans and chlorinated dibenzo-p-dioxins (Page 64, NIOSH Publication 97-140).*

d) Any dust generated during scraping or sanding shall be carefully removed from the area as soon as possible and before the public has access to that area, and disposed of in accordance with applicable regulatory requirements.

#### D. Maintenance Procedures

1. At least 60 days prior to commencement of tours (or within a time frame mutually agreed to in writing between Region IX and DONEE), the DONEE shall submit to Region IX a regular/routine maintenance schedule and maintenance procedures for areas open to the public.

2. The DONEE shall maintain, intact and in place in their existing application, the PCBs described as non-liquid PCB materials, unless normal maintenance or renovation requires their removal. The removed non-liquid PCB materials at concentrations of 50 ppm or greater shall be disposed of in accordance with 40 C.F.R. Part 761.

3. The schedule shall require that the DONEE's maintenance staff conduct regular monthly inspections to see whether the paint covering the caulking and other non-liquid PCB material has worn through or become dissociated from the materials.

4. The written results of these inspections shall include the date of discovery of either a primary coat and/or secondary coat becoming dissociated with the non-liquid PCBs and the date that replication of paint was accomplished.

5. The results of maintenance procedures performed in areas open to the public shall include a listing of any PCB items or non-liquid PCB materials removed from their present locations once the area is open to the public.

6. These records shall be collected and sent to Region IX quarterly. Region IX and the DONEE shall discuss reporting requirements following one year of maintenance record-keeping and paint inspections, and this AGREEMENT may be amended as necessary at that time.

7. If air handling systems containing PCB gaskets are used to supply air in areas open to the public, air shall be monitored by the DONEE for PCBs annually, or as otherwise required by Region IX following the results of required baseline air sampling.

8. If the air handling systems containing PCB gaskets are not used to supply air in areas open to the public, there are no annual air monitoring requirements for these areas.

9. Per Paragraph VII.C.3.k., whenever air monitoring results for areas open to the public exceed levels of  $1\mu\text{g}/\text{m}^3$ , the DONEE shall immediately suspend tours in that area, inform Region IX in writing within 48 hours of the discovery, and conduct the following activities in sequence,

a) turn the air handling system off in the affected areas,

b) thoroughly ventilate the area with the outside air,

c) clean the air handling system and ducts,

d) reinstate air monitoring with the air handling system operating after hours while tours are not being conducted,

e) submit all data on PCB concentrations in air collected during air sampling to Region IX simultaneously with the DONEE's receipt of the results, but no later than 21 days following the air sample being collected by the laboratory.

f) tours in the affected area(s) may be resumed only when air sampling shows the PCB concentrations are within the  $1 \text{ ug/m}^3$  in air specified in Paragraph VII.C.3.i above or after Region IX agrees that the affected area may be used again.

10. If there are repairs to the air handling systems providing air to areas open to the public in which PCB gaskets or the encapsulating materials over the gasket material are disturbed (including removal of either the gasket material or the encapsulating material), the monitoring frequency shall increase to a minimum of quarterly for the period of one calendar year following the repairs.

11. If during the term of this AGREEMENT the DONEE discovers additional uses of PCBs other than those described in this AGREEMENT, the DONEE shall inform Region IX and EPA's Fibers and Organics Branch (Mailcode 7404T), 1200 Pennsylvania Avenue N.W., Washington, D.C. 20460 within 48 hours of such discovery. These EPA offices will determine, in consultation with the DONEE, the extent, if any, to which the terms of the AGREEMENT cover the newly discovered use.

#### **E. Maintenance of Felt Gaskets**

1. Maintenance procedures shall include recognition of potentially contaminated felt flanges, cleaning methods, and disposal requirements.

2. If vessel repairs, damage, alteration, maintenance, conversion or the like result in the opening or disturbing of felt gaskets on the ex-MIDWAY, or if there is any evidence of PCB contamination that has spread from uses such as felt gaskets, the disturbed area shall be treated as the source of the contamination and shall be remediated according to one or more of the following methods provided that the method selected shall be fully effective in preventing human and environmental exposures from PCB releases during the vessel's lifetime in areas open to the public.

a) Disturbance and Removal- Felt gaskets that are disturbed in areas open to the public or in air handling systems servicing areas open to the public shall be removed and the surfaces formerly in contact with the suspected PCB felt gaskets, as well as an area extending six inches on all sides surrounding those surfaces, shall be cleaned to PCB levels of no greater than  $10 \text{ ug}/100 \text{ cm}^2$ . Areas cleaned to no greater than  $100 \text{ ug}/100 \text{ cm}^2$  may be encapsulated. Encapsulation of areas at greater than  $100 \text{ ug}/100 \text{ cm}^2$  is an option with written authorization from Region IX.

b) Encapsulation - Two coats of an effective coating in accordance with the procedures described in Paragraph VII.C.5 shall be applied to cover any surface that has been in contact

with PCB felt materials as well as an area extending six inches on all sides surrounding those surfaces. Locations of encapsulated areas shall be documented and included in maintenance inspections for quarterly written submissions to Region IX.

c) Removal or Disposal - Readily accessible items such as felt gaskets at ventilation duct junctions which are disassembled during the course of work shall be disposed of in accordance with 40 C.F.R. § 761.60. In specific cases where encapsulation or cleaning as described above cannot be employed or are not fully effective, items contaminated with PCBs shall be removed and disposed of in accordance with 40 C.F.R. § 761.60.

### 3. Removal of Ventilation Ducts Containing Felt Flange Gaskets:

a) The DONEE shall ensure that this procedure is accomplished by personnel wearing appropriate protective clothing, respirator and eye protection as required by Paragraph VII.C.6.c.

b) The DONEE shall ensure that personnel be trained in maintenance procedures applicable to these materials (maintenance and removal of wire cables shall also be accomplished by trained individuals in protective clothing). The maintenance procedures shall include training in the recognition of potentially contaminated felt flanges, cleaning methods, and disposal requirements.

c) When removal procedures include the use of cleaning brushes or portable ventilation duct cleaning machines, the resultant dirt or debris shall be disposed of in accordance with 40 C.F.R. § 761.61(a)(5)(v).

d) Brushes and vent duct cleaning equipment shall be disposed of in accordance with 40 C.F.R. § 761.61(a)(5)(v) or decontaminated in accordance with § 761.79.

e) Following the removal of the gasket material (when necessitated by opening flanges or otherwise disturbing the felt material), cleaning or encapsulation of the resulting contamination must be performed in accordance with the procedures outlined above.

### F. Presence of Other Environmental Contaminants

1. The DONEE acknowledges that the ex-MIDWAY contains substances in addition to PCBs which may be regulated under state and/or federal environmental laws and regulations.

2. These substances may include but are not limited to asbestos, lead, and sodium chromate. These substances are not addressed in this AGREEMENT.

3. The DONEE acknowledges its responsibility to comply with all applicable environmental laws and regulations concerning these substances as well as any others which are on the ex-MIDWAY.

#### **G. Notifications**

1. The DONEE shall make available to any potentially exposed employee or any other potentially exposed individual engaged in repair, remedial, removal or disposal activities, information required under the Occupational Safety and Health Administration ("OSHA") Hazard Communication Program at 29 C.F.R. §1910.1200(h) before disturbing any materials identified as PCB items, non-liquid PCB materials, or PCB spills.

2. The DONEE shall post a copy of Appendix A at a site visible to any potentially exposed individual. Appendix A shall be provided to the primary fire department servicing the ex-MIDWAY and, if applicable, the local emergency planning agency ("LEA") in San Diego no later than the date the vessel arrives in San Diego.

#### **H. Training**

1. Although, per Paragraph VII.C.1.b, personnel involved in preparing the ex-MIDWAY to be towed or involved in completing the requirements to open the ex-MIDWAY to the public may enter areas that have not been shown to be 10 ug/100 cm<sup>2</sup> PCB or less on surfaces, and less than 1ug/m<sup>3</sup> PCB in the air, all maintenance workers and tour guides after opening shall be trained on PCB items and non-liquid PCB materials per appropriate sections of the training requirements at 29 C.F.R. § 1910.1200(h) before entering such areas.

2. A manual for this training shall be submitted to Region IX 30 days prior to the commencement of training (or within a time frame mutually agreed to in writing by Region IX and DONEE).

3. This training shall be provided by personnel qualified to recognize PCB items and non-liquid PCB materials. DONEE shall ensure that employees, volunteers, and maintenance workers successfully complete the training course prior to the employee beginning work on the ship and annually thereafter.

4. DONEE shall retain the records of individuals successfully completing the course, and shall produce this information to EPA upon request.

#### **I. New Areas**

1. In the event that the DONEE desires to open new areas to the public which have not previously been sampled, the DONEE shall submit a request in writing to Region IX at least 60 days prior to the planned opening. As part of that request, the DONEE shall submit a copy of the

ex-MIDWAY's blueprints or plans with the new areas highlighted in a different color together with a sampling scheme in writing based on the one developed under Paragraph VII.C.3 above.

2. The sampling plan shall include air and surface sampling in the areas that the DONEE wishes to open to the public. The DONEE shall implement the EPA approved sampling plan and provide the sampling results to the Region IX within a time frame mutually agreed to in writing by Region IX and DONEE.

3. Once Region IX reviews and approves the sampling results, the DONEE may proceed with the other requirements specified in this AGREEMENT such as encapsulation.

#### **J. Security**

1. Physical access to all areas not designated as accessible to the public on the approved map must be effectively prohibited by the DONEE.

2. These security measures, which must not impede fire escape routes, shall be reported in writing to Region IX at least 30 days prior to commencement of tours, (or within a time frame mutually agreed to in writing by Region IX ) and shall be noted on blueprints or maps provided to Region IX.

3. Thirty days prior to commencement of tours (or within a time frame mutually agreed to in writing by Region IX and DONEE), the DONEE shall provide Region IX with written notice of the date that tours are scheduled to begin.

#### **K. Notifications to Consultants, Contractors, Subcontractors, Laboratories, etc.**

1. The DONEE shall provide a signed copy of this AGREEMENT to all contractors, subcontractors, laboratories, and consultants retained after the effective date of this AGREEMENT to conduct or monitor any portion of the work to be performed pursuant to this AGREEMENT before such work is commenced.

2. As to existing contracts, the DONEE shall provide a copy of this AGREEMENT to existing contractors within thirty (30) days of the effective date of this AGREEMENT and at least seven days prior to any contract personnel performing PCB maintenance, clean up or disposal activities as specified in this AGREEMENT.

#### **L. Financial Assurance**

1. The DONEE shall take all necessary steps and use its best efforts to obtain timely funding to meet its obligations under this AGREEMENT. The DONEE shall obtain adequate financial assurance to cover the obligations detailed in Article VII, Requirements and Deliverables.

2. Additionally, the DONEE shall provide financial assurance for the disposal of any items referenced in Paragraph VII.C.2.a which are to remain on ex-MIDWAY at the onset of this AGREEMENT, but at some later time become designated for disposal.

3. The DONEE acknowledges that regardless of the money budgeted to meet the requirements of this AGREEMENT, the DONEE is responsible for compliance with the terms of this AGREEMENT as well as all other environmental requirements concerning asbestos and the management and disposal of any other environmental contaminants aboard the vessel that may be governed by regulations promulgated under TSCA, the Resource Conservation and Recovery Act (RCRA), the Clean Air Act (CAA), or other applicable Federal or State statutes or regulations which are not addressed in this AGREEMENT.

4. Within 30 days after the effective date of this AGREEMENT, the DONEE shall provide Region IX with documentation that \$6.2 million in loans and community pledges are available to develop the ex-MIDWAY into an aircraft carrier memorial museum and to perform the preparation, maintenance, training, and operating procedures required under this AGREEMENT.

5. The DONEE shall provide written financial assurance of a dedicated budget in the amount of at least \$300,000, which shall not be considered the limit of DONEE's liability, to perform the requirements and deliverables, including the sampling and analysis necessary to perform the baseline sampling, and maintenance of the non-liquid PCB materials as necessary to comply with the terms of this AGREEMENT:

6. This written evidence of financial assurance, including a detailed budget, shall be provided to Region IX for approval at least 90 days prior to commencement of tours.

7. Following the initial \$300,000 set-aside, on the commencement of each fiscal year, beginning in FY 2002, the DONEE shall dedicate a minimum of \$30,000 as supported by a detailed budget, to maintain compliance with the Requirements and Deliverables Section of this AGREEMENT. Both the \$300,000 and \$30,000 amounts shall be adjusted annually for inflation.

8. The use of the fund shall be restricted for the purposes set forth in this AGREEMENT. The DONEE shall provide a letter of credit issued by a federally-insured financial institution in the amount of such reserve fund requirement to be drawn upon in accordance with the terms of this AGREEMENT.

9. The DONEE shall maintain accurate budget information concerning implementation of this AGREEMENT and shall provide this information in writing to Region IX upon request.

### **M. Ultimate Disposal of the Ex-Midway**

1. When the useful life of the ex-MIDWAY as an aircraft carrier memorial museum has expired, the DONEE shall contact the Navy pursuant to the terms of the Donation Contract as restated in the EPA/Navy Transfer AGREEMENT.

2. The DONEE shall also advise EPA in writing at least 60 days prior to disposal of the vessel or return of the vessel to the Navy.

3. Unless the ex-MIDWAY is returned to the Navy, the DONEE shall dispose of any PCBs remaining on the vessel in accordance with the storage and disposal requirements of 40 C.F.R. Part 761.

4. Nothing in this AGREEMENT relieves the DONEE of liability under TSCA or any other environmental statute or regulation for the disposal of the vessel in accordance with environmental laws and regulations.

### **VIII. INSPECTION**

1. The DONEE hereby agrees to allow federal, state, and local inspectors, including EPA, whose inspection would relate in any way to health, safety or environmental conditions, to board the ex-MIDWAY at any time and view any and all portions of the vessel, including any records or documents, and take any samples they deem appropriate.

2. The DONEE also agrees to furnish all documents to Federal, State, or local inspectors upon request, relating in any way to health, safety, or environmental conditions on, or potentially caused by materials from the ex-MIDWAY.

### **IX. ENFORCEABILITY**

1. In the event of noncompliance by the DONEE with any provision of this document, EPA reserves the right to pursue any remedies that it may have under TSCA or any other law for any violations of TSCA described in this AGREEMENT.

2. The DONEE shall provide written notification to be received within 48 hours by Region IX of any known or suspected breach of this AGREEMENT. Failure to do so may itself constitute a material breach of this AGREEMENT.

3. DONEE shall immediately suspend or reroute tours upon request from appropriate EPA personnel as determined by Region IX or EPA Headquarters.

4. In the event of a material breach by the DONEE of the terms and conditions of the AGREEMENT, EPA shall notify the DONEE and afford it an opportunity to correct the problem.

However, if EPA determines that the material breach has created an emergency situation, then EPA may choose to immediately terminate the AGREEMENT and/or pursue any options available to resolve the problem.

5. If the DONEE has failed to correct the problem within a time period specified in writing by EPA, EPA may, at its sole discretion, terminate this AGREEMENT by written notice to the DONEE.

6. The determination of what constitutes a material breach shall be decided by EPA. This paragraph shall not be interpreted to limit EPA authority specified in Article XII, Termination.

### **X. MODIFICATIONS**

1. Modifications to this AGREEMENT may be requested by EPA or the DONEE.

2. Except as otherwise provided herein, all such modifications shall be by mutual agreement of the signatories to this AGREEMENT.

3. All modifications requiring mutual agreement of EPA and the DONEE shall be ineffective unless in writing and shall be effective as of the date the last party affixes its signature.

4. If the law or regulations relating to the matters covered in this AGREEMENT change, both parties reserve the right to request modification to this AGREEMENT to reflect such changes. Failure to agree upon such changes may result in termination of this AGREEMENT by EPA.

### **XI. PARTIES BOUND AND NOTICE OF TRANSFER**

1. The provisions of this AGREEMENT shall apply to and be binding upon the parties to this AGREEMENT and their current and future officers, directors, agents, servants, employees, successors, and assignees in their respective capacity.

2. The undersigned representative of each party to this AGREEMENT certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this AGREEMENT, to execute it on behalf of that party, and to legally bind the party on whose behalf he or she executes this AGREEMENT.

3. No change in ownership, corporate, or partnership status of the DONEE will in any way alter the responsibilities of the DONEE or its successors or assigns under this AGREEMENT.

4. All changes in the current officers, directors, or agents shall be reported to EPA Region IX by written notification within 14 working days of the change. Failure to do so may itself constitute a material breach of this AGREEMENT.

**XII. TERMINATION**

1. When, in EPA's determination, a concern arises which EPA determines cannot be addressed in Article IX (Enforceability) or Article X (Modification), then EPA may exercise its enforcement discretion and terminate this AGREEMENT. EPA will provide written notice to the DONEE stating its reason for termination.

2. EPA will specify a time for the DONEE to respond prior to the effective date of termination.

**XIII. EFFECTIVE DATE**

1. This AGREEMENT shall become effective upon execution by authorized representatives of EPA and the DONEE provided that the AGREEMENT between EPA and the Navy addressing the transfer of the ex-USS MIDWAY to the DONEE has been executed.

2. If this AGREEMENT is signed prior to the EPA/Navy AGREEMENT, it does not become effective until the EPA/Navy AGREEMENT is effective.

3. In the event that the authorized representatives of EPA and the DONEE do not execute the AGREEMENT on the same day, the AGREEMENT shall become effective upon the date on which the last party affixed its signature to the AGREEMENT.

**XIV. REPORTING AND NOTICES**

Any reports, notices or questions related to this AGREEMENT should be addressed to the following:

Toxics Office  
United States Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

Telephone: (415) 947-4184  
Facsimile: (415) 947-3583

PCB Program, Toxics Office regarding the ex-USS MIDWAY

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**THE PARTIES SO AGREE:**

*Wayne Natri*  
 \_\_\_\_\_  
 Wayne Natri  
 Regional Administrator  
 Region IX  
 U.S. Environmental Protection Agency

*8/19/2003*  
 \_\_\_\_\_  
 Date

*Alan Uke*  
 \_\_\_\_\_  
 Alan Uke  
 Chairman  
 San Diego Aircraft Carrier Museum  
 San Diego, California

*18 August 2003*  
 \_\_\_\_\_  
 Date

**CONCURRENCE:**

*John Peter Suarez*  
 \_\_\_\_\_  
 John Peter Suarez, Assistant Administrator  
 Office of Enforcement and Compliance Assurance  
 U.S. Environmental Protection Agency

*8/20/03*  
 \_\_\_\_\_  
 Date

**IN RE:**

Transfer of the ex-USS MIDWAY from the Navy to  
 San Diego Aircraft Carrier Museum of San Diego, California

**TABLE I  
Summary of Pre-Opening Activity & Submissions Schedule**

	<b>Deadlines</b>	<b>Prior to Opening Requirements &amp; Submissions</b>
1	30 days after arrival in San Diego.	<ul style="list-style-type: none"> <li>▪ Remove PCB Items (VII.B.1), confirm disposal to EPA within 30 days after completion (VII.B.3). Contact EPA if unable to remove.</li> <li>▪ Submit deck plans with tour routes for EPA approval (VII.C.1.c).</li> <li>▪ Submit PCB Sampling Plan for EPA approval (VII.C.3.a).</li> <li>▪ Remove fluorescent lamp ballasts (VII.C.4).</li> <li>▪ Submit Worker Health &amp; Safety Plan to EPA (VII.C.6.a).</li> </ul>
2	30 days after EPA approval of sample plan.	<ul style="list-style-type: none"> <li>▪ Execute approved PCB sampling plan (VII.C.3.g). Submit results within 21 days &amp; 60 days before start of tours (VII.3.h).</li> </ul>
3	90 days prior to opening.	<ul style="list-style-type: none"> <li>▪ Submit documentation of Financial Assurance &amp; budget to EPA (VIII.2, 4, 6, 8).</li> </ul>
4	60 days prior to opening.	<ul style="list-style-type: none"> <li>▪ Submit list of PCB Items &amp; non-liquid PCB materials to remain on-board to EPA (VII.C.2.a).</li> <li>▪ Submit Schedule of Maintenance &amp; Procedures to EPA (VILD.1).</li> </ul>
5	30 days prior to opening.	<ul style="list-style-type: none"> <li>▪ Encapsulate PCB-suspect non-liquid materials in public access areas (VII.C.5).</li> </ul>
6	30 days prior to start of training.	<ul style="list-style-type: none"> <li>▪ Submit copy of Worker Training Manual to EPA (VII.H.2).</li> </ul>

**Summary of Post Opening Requirements & Submissions**

	<b>Activity</b>	<b>Deadlines</b>
1	<ul style="list-style-type: none"> <li>▪ Monthly Maintenance Records.</li> </ul>	Submit to EPA quarterly (VILD.6)*
2	<ul style="list-style-type: none"> <li>▪ New discoveries of PCB Items &amp; non-liquid PCB materials.</li> </ul>	Report to EPA within 10 days (VII.C.2.b).
3	<ul style="list-style-type: none"> <li>▪ Discoveries of new uses of PCBs.</li> </ul>	Report to EPA within 48 hrs (VILD.11).
4	<ul style="list-style-type: none"> <li>▪ Post opening sampling shows &gt;1 ng/m<sup>3</sup> in air or 10 ug/100 cm<sup>2</sup> on surfaces.</li> </ul>	Suspend tours & report to EPA within 48 hrs (VII.C.3.k, l, m. & VILD.9).
5	<ul style="list-style-type: none"> <li>▪ Request(s) for opening new, previously unsampled areas.</li> </ul>	Submit deck & sampling plan(s) for EPA approval 60 days prior to opening (VIII.1 & 2).
6	<ul style="list-style-type: none"> <li>▪ Repairs to air handling system.</li> </ul>	Air sample quarterly for one year (VILD.10).
7	<ul style="list-style-type: none"> <li>▪ Known or suspected breach in Agreement</li> </ul>	Report to EPA within 48 hrs (IX.1 & 2).
8	<ul style="list-style-type: none"> <li>▪ Disposal or return of Vessel to the Navy.</li> </ul>	Inform EPA 60 days prior (VII.M.1 & 2).

\* May be renegotiated after one year.

## APPENDIX A

### PCB FACT SHEET

*(Developed as part of the EPA AGREEMENT with the San Diego Aircraft Carrier Museum to permit the continued use of the ex-MIDWAY with unauthorized PCBs.)*

Polychlorinated biphenyls (PCBs) are a toxic environmental contaminant. For information on health effects and toxicity, call the Environmental Protection Agency's TSCA Assistance Information Service at (202) 554-1404.

PCBs have been used, in a liquid form, in the dielectric fluid of electrical transformers, capacitors, oil-filled cable, and fluorescent light ballasts, and in hydraulic systems. PCBs were also added as plasticizers and fire retardants to a variety of commercial products. Most of the regulated liquid PCBs have been removed from the ex-MIDWAY.

The Navy has found that the following items on some vessels constructed before 1979 may contain PCBs in regulated quantities: caulking; felt and rubber ventilation duct flange gaskets; insulation and other non-metallic components of electrical cable; fluorescent light ballast starters and potting material; bulkhead and pipe insulation; foam rubber/plastic/fiberglass/cork anti-sweat insulation used on hull surfaces and cold water piping; other rubber products such as pipe hanger rubber blocks, snubbers, bumpers, shock and vibration mounts, pads, spools, hatch gaskets, O-rings, packing, grommets, etc.; adhesive tape and double-backed adhesive tape; dried aluminized and dried oil-based paint.

The items listed above could be found anywhere on the ex-MIDWAY. Such non-liquid items are generally not marked. The non-liquid items should be maintained intact and in place in their existing locations, unless removal is essential to work being undertaken. If such items are removed, they must be handled, stored, and disposed of as regulated PCB items in accordance with the requirements of Part 761 of title 40, Code of Federal Regulations, unless tested and found not to contain regulated PCBs.